IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 370 of 2004

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT Sd/=

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 to 5 :: NO

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MANHARLAL BABULAL - Petitioner(s)

Versus

VINODCHANDRA PREMJIBHAI GANDHI - Respondent(s)

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Appearance :

MR SATYEN B RAWAL for Petitioner
None for Respondent

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 27/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 20th February, 2004, passed by the learned Joint District Judge, Jamnagar in Civil Regular Appeal No. 39 of 1986,

the appellants; heirs and legal representatives of the defendant in Civil Suit No. 80 of 1981, have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The predecessor-in-title of the respondents, the plaintiff, instituted Regular Civil Suit No. 80 of 1981 in the Court of learned Civil Judge [JD], Dwarka. It was alleged that the plaintiff was the owner of the suit building situated at Dwarka. Part of the suit building comprising one room and a kitchen was leased to the defendant for a monthly rent of Rs. 40/=. The defendant was in arrears of rent since 1st June, 1980 till 30th May, 1981. In answer to the notice of demand dated 2nd June, 1981, the defendant did not pay the amount of rent due. The plaintiffs, therefore, prayed for a decree for eviction and recovery of amount of rent and the water charges of Rs. 7=50 paise. It was alleged that the defendant was required to pay 50 paise every month for use of water tap. The suit was contested by the defendant by filing written statement Exh.26. In the written statement, the defendant raised dispute as to the standard rent. The learned Civil Judge, by judgment and order dated 28th February, 1986 held that the tenant was in arrears of rent for six months and more; that he did

not pay the amount of rent due within one month from the date of the receipt of the notice nor did he raise dispute as to the standard rent either in reply to the suit notice or in an independent proceeding. The learned Civil Judge, therefore, held that the plaintiff was entitled to decree for eviction as envisaged by Section 12 (3)(a) of the Rent Act. The learned Civil Judge also held that the agreed rent of Rs.40/= was the standard rent. Examining the applicability of Section 12 (3)(b) of the Rent Act, the learned Judge held that the defendant was not entitled to protection under section 12 (3)(b) of the Rent Act either. Feeling aggrieved, the petitioners preferred Civil Regular Appeal No. 39 of 1986 in the Court of learned District Judge, Jamnagar which came to be dismissed by the *impugned* judgment and order dated 20th February, 2004. Therefore, the present Revision Application.

Learned advocate Mr. Raval has submitted that the defendant was entitled to protection under Section 12 (3) (b) of the Rent Act. Before the first date of hearing of the suit [the date the issues were framed] the defendant had deposited the entire amount of rent due and pending the suit, he deposited the rent regularly or rather in advance. He has submitted that the learned trial Judge erred in passing decree for eviction under Section 12 (3)

(a) as well as under Section 12 (3)(b) of the Rent Act. He has also submitted that as the standard rent was decided by the learned trial Judge on the date of the judgment, till the date the defendant was not expected to deposit the rent pending the suit. Therefore also, no decree for eviction should have been passed against the defendants for not depositing the rent regularly, pending the suit.

I am unable to agree with Mr. Raval. It is not in dispute that the agreed rent of Rs. 40/= was payable by month and that the defendant was in arrears of rent for more than six months. In answer to the notice of demand, the defendant did not pay the amount of rent due within one month from the date of the receipt of the notice nor did he raise dispute as to the standard rent within such one month. As to the water charges, it should be noted that the water charges of Re.0-50 paise was to be paid by the defendant to the plaintiff every month. The rent was, therefore, payable by the month. As the matter is squarely covered by Section 12 (3)(a) of the Rent Act, the decree for eviction was inevitable. It should be noted that the learned Civil Judge also examined applicability of Section 12 (3)(b) of the Rent Act and held that by not complying with the conditions mentioned in that section, the defendant had forfeited right to

protection under Section 12 (3)(b) of the Rent Act, if any. In my view, the learned Civil Judge cannot be said to have erred in examining the alternative argument advanced by the defendant. The decree for eviction passed under Section 12 (3)(a) of the Rent Act has been rightly confirmed by the lower appellate court.

No ground for interference is made out. The Revision Application is dismissed *in limine*.

Sd/-

{**Miss R.M Doshit, J.**}

*Prakash**